

REFERENCE TITLE: dangerous; incompetent person; evaluation; commitment

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

# HB 2581

Introduced by  
Representative Allen J

## AN ACT

AMENDING SECTIONS 13-4501, 13-4508, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4519; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 40; RELATING TO INCOMPETENCE TO STAND TRIAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4501, Arizona Revised Statutes, is amended to  
3 read:

4 13-4501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Clinical liaison" means a mental health expert or any other  
7 individual who has experience and training in mental health or  
8 developmental disabilities and who is qualified and appointed by the court  
9 to aid in coordinating the treatment or training of individuals who are  
10 found incompetent to stand trial. If intellectual disability is an issue,  
11 the clinical liaison shall be an expert in intellectual disabilities.

12 2. "DANGEROUS" MEANS LIKELY, AS A RESULT OF A MENTAL ILLNESS,  
13 DEFECT OR DISABILITY, TO COMMIT OR ATTEMPT TO COMMIT HOMICIDE OR A  
14 SEXUALLY VIOLENT OFFENSE AS DEFINED IN SECTION 36-3701 OR TO CAUSE OR  
15 ATTEMPT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

16 ~~3.~~ 3. "Incompetent to stand trial" means that as a result of a  
17 mental illness, defect or disability a defendant is unable to understand  
18 the nature and object of the proceeding or to assist in the defendant's  
19 defense. In the case of a person under eighteen years of age when the  
20 issue of competency is raised, incompetent to stand trial also means a  
21 person who does not have sufficient present ability to consult with the  
22 person's lawyer with a reasonable degree of rational understanding or who  
23 does not have a rational and factual understanding of the proceedings  
24 against the person. The presence of a mental illness, defect or  
25 disability alone is not grounds for finding a defendant incompetent to  
26 stand trial.

27 ~~4.~~ 4. "Mental health expert" means a physician who is licensed  
28 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed  
29 pursuant to title 32, chapter 19.1 and who is:

30 (a) Familiar with this state's competency standards and statutes  
31 and criminal and involuntary commitment statutes.

32 (b) Familiar with the treatment, training and restoration programs  
33 that are available in this state.

34 (c) Certified by the court as meeting court developed guidelines  
35 using recognized programs or standards.

36 ~~5.~~ 5. "Mental illness, defect or disability" means a psychiatric  
37 or neurological disorder that is evidenced by behavioral or emotional  
38 symptoms, including congenital mental conditions, conditions resulting  
39 from injury or disease and developmental disabilities as defined in  
40 section 36-551.

41 6. "SECURE STATE MENTAL HEALTH FACILITY" MEANS A LICENSED FACILITY  
42 UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

43 ~~7.~~ 7. "Threat to public safety" means charged with the commission  
44 of any of the following:

1 (a) A crime involving the discharge, use or threatening exhibition  
2 of a deadly weapon or dangerous instrument or the infliction of physical  
3 injury on another person.

4 (b) A dangerous crime against children pursuant to section 13-705.

5 (c) Two or more nondangerous felonies within a period of  
6 twenty-four months.

7 Sec. 2. Section 13-4508, Arizona Revised Statutes, is amended to  
8 read:

9 13-4508. Privilege against self-incrimination; sealed reports

10 A. The privilege against self-incrimination applies to any  
11 examination that is ordered by the court pursuant to this chapter.

12 B. Any evidence or statement that is obtained during an examination  
13 is not admissible at any proceeding to determine a defendant's guilt or  
14 innocence unless the defendant presents evidence that is intended to rebut  
15 the presumption of sanity.

16 C. Any statement made by the defendant during an examination or any  
17 evidence resulting from that statement concerning any other event or  
18 transaction is not admissible at any proceeding to determine the  
19 defendant's guilt or innocence of any other criminal charges that are  
20 based on those events or transactions, except that a statement or evidence  
21 may be used by any party in a hearing to determine whether the defendant  
22 is eligible for court-ordered treatment pursuant to title 36, chapter 5 or  
23 is a sexually violent person.

24 D. Any statement made by the defendant or any part of the  
25 evaluations that is obtained during an examination may not be used for any  
26 purpose without the written consent of the defendant or the defendant's  
27 guardian or a court order that is entered by the court that ordered the  
28 examination or that is conducting a dependency or severance proceeding.

29 E. After a plea of guilty or guilty except insane or the trial or  
30 after the defendant is found to be unable to be restored to competence,  
31 the court shall order all the reports submitted pursuant to this section  
32 sealed. The court may order that the reports be opened only as follows:

33 1. For use by the court or defendant, or by the prosecutor if  
34 otherwise ~~permitted~~ ALLOWED by law, for further competency or sanity  
35 evaluations, ~~or~~ in a hearing to determine whether the defendant is  
36 eligible for court-ordered treatment pursuant to title 36, chapter 5 or is  
37 a sexually violent person OR IN A HEARING TO DETERMINE WHETHER THE  
38 DEFENDANT IS DANGEROUS AND ELIGIBLE FOR COMMITMENT PURSUANT TO SECTION  
39 13-4519.

40 2. For statistical analysis.

41 3. When the records are deemed necessary to assist in mental health  
42 treatment pursuant to section 13-502 or 13-4517.

43 4. For use by the probation department or the state department of  
44 corrections if the defendant is in the custody of or is scheduled to be  
45 transferred into the custody of the state department of corrections for

1 the purposes of assessment and supervision or monitoring of the defendant  
2 by that department.

3 5. For use by a mental health treatment provider that provides  
4 treatment to the defendant or that assesses the defendant for treatment.

5 6. For data gathering.

6 7. For scientific study.

7 F. Any statement made by the defendant during an examination that  
8 is conducted pursuant to this chapter or any evidence resulting from that  
9 statement is not subject to disclosure pursuant to section 36-509.

10 Sec. 3. Section 13-4509, Arizona Revised Statutes, is amended to  
11 read:

12 13-4509. Expert's report

13 A. An expert who is appointed pursuant to section 13-4505 shall  
14 submit a written report of the examination to the court within ten working  
15 days after the examination is completed. The report shall include at  
16 least the following information:

17 1. The name of each mental health expert who examines the  
18 defendant.

19 2. A description of the nature, content, extent and results of the  
20 examination and any test conducted **AND OF ANY INSTRUMENT OR TOOL USED TO**  
21 **ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.**

22 3. The facts on which the findings are based.

23 4. An opinion as to the competency of the defendant.

24 B. If the mental health expert determines that the defendant is  
25 incompetent to stand trial, the report shall also include the following  
26 information:

27 1. The nature of the mental disease, defect or disability that is  
28 the cause of the incompetency.

29 2. The defendant's prognosis.

30 3. **THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT THAT MAKES**  
31 **THE DEFENDANT LIKELY TO BE DANGEROUS.**

32 ~~3.~~ 4. The most appropriate form and place of treatment in this  
33 state, based on the defendant's therapeutic needs and potential threat to  
34 public safety.

35 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and  
36 should be subject to involuntary treatment.

37 6. **IF THE PROGNOSIS INCLUDES A DETERMINATION THAT THERE IS NO**  
38 **SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN**  
39 **TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,**  
40 **WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.**

41 C. If the mental health examiner determines that the defendant is  
42 currently competent by virtue of ongoing treatment with psychotropic  
43 medication, the court, in its discretion, may appoint a mental health  
44 expert who is a physician to address the necessity of continuing that  
45 treatment and any limitations that the medication may have on competency.

1           Sec. 4. Section 13-4515, Arizona Revised Statutes, is amended to  
2 read:

3           13-4515. Duration of order; excluded time calculation; notice  
4                           of dismissed charge or voided order; petitions

5           A. An order or combination of orders that is issued pursuant to  
6 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one  
7 months or the maximum possible sentence the defendant could have received  
8 pursuant to section 13-702, section 13-703, section 13-704, subsection A,  
9 B, C, D or E, section 13-705, section 13-706, subsection A, section  
10 13-708, subsection D or section 13-751 or any section for which a specific  
11 sentence is authorized, whichever is less. In making this determination  
12 the court shall not consider the sentence enhancements under section  
13 13-703 or 13-704 for prior convictions.

14           B. The court shall only consider the time a defendant actually  
15 spends in a restoration to competency program when calculating the time  
16 requirements pursuant to subsection A of this section.

17           C. The court shall notify the prosecutor, the defense attorney, the  
18 medical supervisor and the treating facility if the charges against the  
19 defendant are dismissed or if an order is voided by the court. No charges  
20 shall be dismissed without a hearing ~~prior to~~ BEFORE the dismissal.

21           D. If a defendant is discharged or released on the expiration of an  
22 order or orders issued pursuant to section 13-4512 or 13-4514, the medical  
23 supervisor may file a petition stating that the defendant requires further  
24 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian  
25 pursuant to title 14 **OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4519**  
26 **BECAUSE THE DEFENDANT IS DANGEROUS.**

27           Sec. 5. Section 13-4517, Arizona Revised Statutes, is amended to  
28 read:

29           13-4517. Incompetent defendants; disposition

30           A. If the court finds that a defendant is incompetent to stand  
31 trial and that there is no substantial probability that the defendant will  
32 regain competency within twenty-one months after the date of the original  
33 finding of incompetency, any party may request that the court:

34           1. Remand the defendant to an evaluating agency for the institution  
35 of civil commitment proceedings pursuant to title 36, chapter 5. If the  
36 defendant is remanded, the prosecutor shall file a petition for evaluation  
37 and provide any known criminal history for the defendant.

38           2. Appoint a guardian pursuant to title 14, chapter 5.

39           3. Release the defendant from custody and dismiss the charges  
40 against the defendant without prejudice.

41           4. **IF THE DEFENDANT IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED IN**  
42 **SECTION 13-706, HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS**  
43 **AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4519.**

44           B. If the court enters an order pursuant to subsection A, paragraph  
45 1, ~~or~~ 2 **OR 4** of this section, the court may also order an assessment of

1 the defendant's eligibility for private insurance or public benefits that  
2 may be applied to the expenses of the defendant's medically necessary  
3 maintenance and treatment, including services pursuant to title 36,  
4 chapter 29, state-only behavioral health services, title xviii services  
5 and medicare part D prescription drug benefits, supplemental security  
6 income and supplemental security disability income.

7 C. The court may retain jurisdiction over the defendant until the  
8 defendant is committed for treatment pursuant to SECTION 13-4519 OR title  
9 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.

10 D. If the court remands the defendant for the institution of civil  
11 commitment proceedings pursuant to title 36, chapter 5 and the court is  
12 notified that the defendant has not had a civil commitment evaluation OR  
13 IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A PARAGRAPH 4 OF THIS  
14 SECTION, the court, if it has retained jurisdiction, may order the sheriff  
15 to take the defendant into custody so that the court may explore options  
16 pursuant to subsection A, paragraph 2, ~~OR~~ 3 OR 4 of this section.

17 E. If the court is notified that the defendant has not been ordered  
18 into treatment pursuant to title 36, chapter 5 and the court has retained  
19 jurisdiction, the court may order the sheriff to take the defendant into  
20 custody so that the court may explore options pursuant to subsection A,  
21 paragraph 2, ~~OR~~ 3 OR 4 of this section.

22 Sec. 6. Title 13, chapter 41, Arizona Revised Statutes, is amended  
23 by adding section 13-4519, to read:

24 13-4519. Dangerous and incompetent defendants: commitment  
25 hearing; disposition; findings

26 A. IF A COURT ENTERS AN ORDER PURSUANT TO SECTION 13-4517,  
27 SUBSECTION A, PARAGRAPH 4, THE COURT SHALL HOLD A HEARING TO DETERMINE IF  
28 THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED. IF THE  
29 DEFENDANT IS NOT REPRESENTED BY AN ATTORNEY AND IS INDIGENT, THE COURT  
30 SHALL APPOINT AN ATTORNEY, AS SOON AS POSSIBLE AND BEFORE SETTING THE  
31 HEARING, TO REPRESENT THE DEFENDANT AT THE HEARING AND ANY FURTHER  
32 PROCEEDINGS UNDER TITLE 36, CHAPTER 40.

33 B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER  
34 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL  
35 HEALTH EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO  
36 DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

37 C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS, THE  
38 STATE SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT  
39 IS DANGEROUS AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE  
40 CHARGED OFFENSE. IF THE COURT DOES NOT FIND THE DEFENDANT IS DANGEROUS,  
41 THE COURT SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A,  
42 PARAGRAPH 1, 2 OR 3.

43 D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT  
44 SHALL ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH  
45 FACILITY LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT

1 COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS. THE DEFENDANT  
2 SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE  
3 DEFENDANT EITHER COMPETENT OR NONDANGEROUS.

4 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:  
5 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT  
6 AND THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE  
7 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

8 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO  
9 THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE  
10 FOLLOWING OCCURS:

- 11 (a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.
- 12 (b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.
- 13 (c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE  
14 THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN SENTENCED  
15 PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER  
16 OFFENSES.

17 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS  
18 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE  
19 DEFENDANT FROM TREATMENT. THE COURT HAS CONTINUING JURISDICTION OVER THE  
20 PERSON PURSUANT TO TITLE 36, CHAPTER 40.

21 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS  
22 SECTION, THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE  
23 THE EXTENT TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE  
24 PRIVATE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE  
25 DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY,  
26 INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT  
27 SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE  
28 DEPARTMENT MAY ACCEPT THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT  
29 IS RESPONSIBLE FOR ALL REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

30 H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE  
31 INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36,  
32 CHAPTER 40.

33 Sec. 7. Title 36, Arizona Revised Statutes, is amended by adding  
34 chapter 40, to read:

35 CHAPTER 40  
36 DANGEROUS AND INCOMPETENT PERSONS  
37 ARTICLE 1. GENERAL PROVISIONS

38 36-4001. Definitions

39 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

40 1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

41 (a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT  
42 STATUTES AND STANDARDS THAT ARE AVAILABLE IN THIS STATE FOR PERSONS WITH A  
43 MENTAL ILLNESS, DEFECT OR DISABILITY.

44 (b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED  
45 GUIDELINES.

1           2. "COMMITTED INCOMPETENT" MEANS A PERSON WHO HAS BEEN DETERMINED  
2 TO BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13,  
3 CHAPTER 41.

4           3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT-ORDERED TREATMENT IN  
5 A SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS  
6 CONDUCTED IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE  
7 HOSPITAL.

8           4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR  
9 NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL  
10 SYMPTOMS, INCLUDING A CONGENITAL MENTAL CONDITION, A CONDITION RESULTING  
11 FROM INJURY OR DISEASE OR A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION  
12 36-551.

13           5. "STATE HOSPITAL" MEANS THE ARIZONA STATE HOSPITAL.

14           6. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF THE STATE  
15 HOSPITAL.

16           36-4002. Annual examination of committed persons; report;  
17 records access; attorney withdrawal

18           A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL  
19 OF THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE SUPERVISION OF THE  
20 STATE HOSPITAL SHALL ANNUALLY EXAMINE EACH PERSON WHO IS COMMITTED  
21 PURSUANT TO SECTION 13-4519. THE PERSON WHO CONDUCTS THE ANNUAL  
22 EXAMINATION SHALL SUBMIT THE EXAMINATION REPORT TO THE COURT, THE  
23 COMMITTED INCOMPETENT AND ANY ATTORNEY OF RECORD FOR THE COMMITTED  
24 INCOMPETENT IN CONNECTION WITH THE COMMITTED INCOMPETENT'S COMMITMENT.  
25 THE ANNUAL REPORT SHALL STATE THE TREATMENT AND EDUCATION THAT THE  
26 COMMITTED INCOMPETENT HAS RECEIVED, A PROGNOSIS FOR THE COMMITTED  
27 INCOMPETENT'S RESTORATION TO COMPETENCY AND WHETHER THE COMMITTED  
28 INCOMPETENT REMAINS DANGEROUS.

29           B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT  
30 PROFESSIONAL SUBMITS A REPORT INDICATING THAT THE COMMITTED INCOMPETENT IS  
31 COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS, THE COURT SHALL HOLD A  
32 HEARING TO DETERMINE WHETHER THE COMMITTED INCOMPETENT IS COMPETENT OR IS  
33 NO LONGER DANGEROUS.

34           C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT  
35 PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED INCOMPETENT IS NO LONGER  
36 DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED  
37 INCOMPETENT IS TAKING, THE REPORT SHALL STATE WHETHER THE COMMITTED  
38 INCOMPETENT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS  
39 RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A  
40 LESS RESTRICTIVE ALTERNATIVE.

41           D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER  
42 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST  
43 OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE  
44 COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE  
45 PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY

1 REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT  
2 PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE  
3 STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE  
4 COMMITTED INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT  
5 CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS OR THAT THE  
6 COMMITTED INCOMPETENT IS COMPETENT TO STAND TRIAL.

7 E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS  
8 TO ALL RECORDS CONCERNING THE COMMITTED INCOMPETENT. ALL COMPETENT  
9 PROFESSIONALS SHALL HAVE EQUAL ACCESS TO THE COMMITTED INCOMPETENT AS WELL  
10 AS ALL RECORDS CONCERNING THE COMMITTED INCOMPETENT.

11 F. THIS SECTION DOES NOT PRECLUDE THE COMMITTED INCOMPETENT FROM  
12 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE  
13 ALTERNATIVE OR DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

14 G. IF THE COMMITTED INCOMPETENT'S ATTORNEY WITHDRAWS FROM  
15 REPRESENTING THE COMMITTED INCOMPETENT AT ANY TIME DURING THE COMMITTED  
16 INCOMPETENT'S COMMITMENT, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE  
17 STATE AND THE COMMITTED INCOMPETENT AND EITHER ALLOW THE COMMITTED  
18 INCOMPETENT SUFFICIENT TIME TO EMPLOY ANOTHER ATTORNEY OR, IF THE  
19 COMMITTED INCOMPETENT IS INDIGENT, APPOINT AN ATTORNEY TO REPRESENT THE  
20 COMMITTED INCOMPETENT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

21 36-4003. Disposition

22 AFTER A HEARING PURSUANT TO SECTION 36-4002 OR 36-4004, IF THE COURT  
23 FINDS THAT:

24 1. THE COMMITTED INCOMPETENT HAS BEEN RESTORED TO COMPETENCY, THE  
25 COURT SHALL ORDER THE CRIMINAL PROCEEDINGS TO RESUME.

26 2. THE COMMITTED INCOMPETENT HAS NOT BEEN RESTORED TO COMPETENCY  
27 AND:

28 (a) THE COMMITTED INCOMPETENT IS NOT DANGEROUS, THE COURT SHALL  
29 RELEASE THE COMMITTED INCOMPETENT FROM TREATMENT AND PROCEED PURSUANT TO  
30 SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

31 (b) THE COMMITTED INCOMPETENT IS NOT DANGEROUS IN WHOLE OR IN PART  
32 BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING,  
33 INCLUDING TAKING MEDICATION, THE COURT MAY RELEASE THE COMMITTED  
34 INCOMPETENT TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005  
35 AND 36-4006.

36 (c) THE COMMITTED INCOMPETENT IS DANGEROUS, THE COMMITTED  
37 INCOMPETENT SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND  
38 TREATMENT TO RENDER THE COMMITTED INCOMPETENT COMPETENT OR NONDANGEROUS.

39 36-4004. Petition for conditional release; procedures

40 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF  
41 THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED  
42 INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE  
43 COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IF CONDITIONALLY RELEASED TO  
44 A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW  
45 THE COMMITTED INCOMPETENT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO

1 A LESS RESTRICTIVE ALTERNATIVE. THE COMMITTED INCOMPETENT SHALL SERVE THE  
2 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL  
3 HOLD A HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS  
4 RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE  
5 PETITION. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER  
6 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED  
7 INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY  
8 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE  
9 COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY  
10 THE PROSECUTING AGENCY.

11 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR  
12 AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT'S MENTAL ILLNESS,  
13 DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT  
14 REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE  
15 ALTERNATIVE OR CONDITIONALLY DISCHARGED.

16 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM  
17 ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS  
18 RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE  
19 STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE  
20 DIRECTOR SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE COMMITTED  
21 INCOMPETENT OF THE COMMITTED INCOMPETENT'S RIGHT TO PETITION THE COURT FOR  
22 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL  
23 OF THE SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF  
24 RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH  
25 THE ANNUAL EXAMINATION REPORT.

26 D. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE HEARING. THE  
27 PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED  
28 BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE  
29 COMMITTED INCOMPETENT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT  
30 COMMITTED INCOMPETENT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY  
31 FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE  
32 THAT THE COMMITTED INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS  
33 NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS IF  
34 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE  
35 DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE  
36 DISCHARGED FROM TREATMENT.

37 E. AT THE CONCLUSION OF A HEARING, IF THE COURT FINDS THAT THERE IS  
38 NO LEGALLY SUFFICIENT EVIDENTIARY BASIS TO CONCLUDE THAT THE CONDITIONS  
39 PRESCRIBED IN SECTION 36-4006 HAVE BEEN MET, THE COURT SHALL GRANT THE  
40 STATE'S MOTION FOR A JUDGMENT ON THE ISSUE OF CONDITIONAL RELEASE TO A  
41 LESS RESTRICTIVE ALTERNATIVE.

42 36-4005. Conditional release to a less restrictive  
43 alternative; conditions; reports; review

44 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS  
45 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED

1 INCOMPETENT AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT  
2 DETERMINES THAT THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE  
3 COURT SHALL ENTER JUDGMENT AND ORDER THE COMMITTED INCOMPETENT'S  
4 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

5 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED  
6 INCOMPETENT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE  
7 EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE  
8 REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS  
9 THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED  
10 INCOMPETENT WILL CONTINUE TO RECEIVE TREATMENT AND HABILITATION FOLLOWING  
11 RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE  
12 COURT FINDS THAT THE COMMITTED INCOMPETENT WILL CONTINUE TO RECEIVE THE  
13 NEEDED TREATMENT OR HABILITATION, THE COURT MAY ORDER THE COMMITTED  
14 INCOMPETENT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE  
15 ON THE CONDITION THAT THE COMMITTED INCOMPETENT CONTINUE TO RECEIVE  
16 TREATMENT OR HABILITATION. IF THE COMMITTED INCOMPETENT FAILS TO RECEIVE  
17 THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE  
18 CONDITIONAL RELEASE.

19 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED  
20 INCOMPETENT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE  
21 COMMITTED INCOMPETENT'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE  
22 COMMUNITY. IF THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH  
23 ENSURE THE COMMITTED INCOMPETENT'S COMPLIANCE WITH TREATMENT AND PROTECT  
24 THE COMMUNITY, THE COURT SHALL REMAND THE COMMITTED INCOMPETENT TO THE  
25 CUSTODY OF THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION  
26 OR TREATMENT IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE  
27 SUPERINTENDENT.

28 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR  
29 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND  
30 CONDITIONS OF A COMMITTED INCOMPETENT'S PLACEMENT IN A LESS RESTRICTIVE  
31 ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING  
32 TO PROVIDE THE TREATMENT.

33 E. BEFORE THE COURT AUTHORIZES A COMMITTED INCOMPETENT'S  
34 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL  
35 IMPOSE ANY CONDITIONS ON THE COMMITTED INCOMPETENT THAT THE COURT  
36 DETERMINES ARE NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE  
37 CONDITIONS SHALL INCLUDE THAT BEFORE BEING RELEASED TO A LESS RESTRICTIVE  
38 ALTERNATIVE, A COMMITTED INCOMPETENT MUST SUBMIT TO NINETY DAYS OF  
39 INPATIENT EVALUATION AT THE STATE HOSPITAL, EXCEPT THAT IN THE  
40 SUPERINTENDENT'S DISCRETION, THE DURATION OF THE EVALUATION PERIOD MAY BE  
41 LESS THAN NINETY DAYS. THE COURT SHALL ORDER THE SUPERINTENDENT TO  
42 INVESTIGATE THE LESS RESTRICTIVE ALTERNATIVE AND TO SUBMIT ADDITIONAL  
43 CONDITIONS TO THE COURT. THE COURT SHALL GIVE A COPY OF THE CONDITIONS OF  
44 RELEASE TO THE COMMITTED INCOMPETENT AND TO ANY DESIGNATED SERVICE  
45 PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE FOLLOWING:

- 1           1. SPECIFYING A RESIDENCE.
- 2           2. REQUIRING COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY
- 3 TESTING OR MONITORING REQUIRED.
- 4           3. PROHIBITING ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
- 5 PERSONS AND PROHIBITING ASSOCIATING WITH OTHER PERSONS OR TYPES OF
- 6 PERSONS.
- 7           4. PROHIBITING THE USE OF ALCOHOL AND OTHER DRUGS.
- 8           5. REQUIRING SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.
- 9           6. REQUIRING THAT THE COMMITTED INCOMPETENT REMAIN IN THIS STATE
- 10 UNLESS THE COMMITTED INCOMPETENT RECEIVES PRIOR AUTHORIZATION TO LEAVE
- 11 THIS STATE FROM THE COURT.
- 12           7. REQUIRING COMPLIANCE WITH REQUIRED SUPERVISION, MONITORING OR
- 13 REPORTING.
- 14           8. COMPLYING WITH OTHER CONDITIONS THAT THE COURT OR THE
- 15 SUPERINTENDENT DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED
- 16 INCOMPETENT OR OTHERS.
- 17           F. FOLLOWING A DETERMINATION THAT A COMMITTED INCOMPETENT'S RELEASE
- 18 TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE
- 19 RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE
- 20 SUPERINTENDENT, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A
- 21 LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED INCOMPETENT PARTICIPATE IN
- 22 OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE
- 23 MONITORING A COMMITTED INCOMPETENT BY USE OF AN ELECTRONIC BRACELET. THE
- 24 TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN THE COMMITTED
- 25 INCOMPETENT'S TREATMENT REQUIREMENTS OR THE COMMITTED INCOMPETENT IS
- 26 DISCHARGED PURSUANT TO SECTION 36-4009.
- 27           G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH
- 28 DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE
- 29 COMMITTED INCOMPETENT IS COMPLYING WITH THE TERMS AND CONDITIONS OF
- 30 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO:
- 31           1. THE COURT.
- 32           2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.
- 33           3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED
- 34 INCOMPETENT WAS FOUND TO BE A COMMITTED INCOMPETENT OR TO THE ATTORNEY
- 35 GENERAL.
- 36           H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED INCOMPETENT
- 37 WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE
- 38 YEAR AFTER THE COMMITTED INCOMPETENT'S RELEASE AND THEREAFTER ON MOTION OF
- 39 EITHER PARTY OR THE SUPERINTENDENT OR ON THE COURT'S OWN MOTION UNTIL THE
- 40 COMMITTED INCOMPETENT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL
- 41 DETERMINE ONLY IF THE COMMITTED INCOMPETENT SHALL CONTINUE TO BE
- 42 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS
- 43 DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
- 44 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
- 45 OPINIONS OF THE SUPERINTENDENT AND ANY OTHER COMPETENT PROFESSIONAL.

1 I. IF A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A LESS  
2 RESTRICTIVE ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY  
3 THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED INCOMPETENT'S RELEASE SO  
4 THAT THE DEPARTMENT OF PUBLIC SAFETY MAY COMMENCE ANY APPLICABLE  
5 NOTIFICATION PROCESS UNDER SECTION 13-3825.

6 36-4006. Conditional release to a less restrictive  
7 alternative; findings

8 BEFORE THE COURT ORDERS THAT A COMMITTED INCOMPETENT BE  
9 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL  
10 FIND THAT ALL OF THE FOLLOWING APPLY:

11 1. THE COMMITTED INCOMPETENT WILL BE TREATED BY A PROVIDER WHO IS  
12 QUALIFIED TO PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

13 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE  
14 COMMITTED INCOMPETENT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED  
15 INCOMPETENT'S TREATMENT, WILL REPORT ON THE COMMITTED INCOMPETENT'S  
16 PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS  
17 PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SECTION IMMEDIATELY TO THE COURT,  
18 THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT.

19 3. THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A  
20 LESS RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE  
21 SUFFICIENTLY SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT  
22 IS PROVIDING THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED  
23 INCOMPETENT AGREES IN WRITING TO THE FOLLOWING CONDITIONS:

24 (a) TO ACCEPT THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT.

25 (b) TO PROVIDE THE LEVEL OF SECURITY THAT THE COURT REQUIRES.

26 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE  
27 CONDITIONALLY RELEASED COMMITTED INCOMPETENT FROM THE HOUSING ARRANGEMENT  
28 TO WHICH THE COMMITTED INCOMPETENT HAS BEEN ASSIGNED.

29 4. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE PROVIDER AND ALL  
30 OF THE REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

31 5. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE SUPERVISION  
32 REQUIREMENTS THAT ARE IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

33 36-4007. Detention and commitment requirements; definition

34 A. A COMMITTED INCOMPETENT DOES NOT FORFEIT ANY LEGAL RIGHT AND MAY  
35 NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR  
36 ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN  
37 THIS ARTICLE.

38 B. A COMMITTED INCOMPETENT SHALL RECEIVE CARE, SUPERVISION OR  
39 TREATMENT. THE SUPERINTENDENT SHALL KEEP RECORDS DETAILING ALL MEDICAL,  
40 EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED INCOMPETENT  
41 RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS  
42 THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL  
43 BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

44 1. THE COMMITTED INCOMPETENT.

45 2. THE COMMITTED INCOMPETENT'S ATTORNEY.

1           3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.  
2           4. THE COURT.  
3           5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL WHO DEMONSTRATES A  
4 NEED FOR ACCESS TO THE RECORDS OR REPORTS.  
5           6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR  
6 ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE  
7 FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED  
8 INCOMPETENT.  
9           C. AT THE TIME A COMMITTED INCOMPETENT IS DETAINED OR TRANSFERRED  
10 INTO A LICENSED FACILITY, THE PERSON IN CHARGE OF THE FACILITY OR THE  
11 PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND  
12 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED  
13 INCOMPETENT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED  
14 INCOMPETENT'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY  
15 TO THE COMMITTED INCOMPETENT. THE FACILITY SHALL ALLOW A RESPONSIBLE  
16 RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITS THAT THE COMMITTED  
17 INCOMPETENT SPECIFICALLY IMPOSES. THE FACILITY MAY NOT DISCLOSE THE  
18 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE  
19 COMMITTED INCOMPETENT OR A COURT ORDER.  
20           D. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED INCOMPETENT FROM  
21 EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING  
22 RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF  
23 HABEAS CORPUS. THE COMMITTED INCOMPETENT MUST EXHAUST ALL DIRECT APPEAL  
24 AND POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED  
25 INCOMPETENT'S RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.  
26           E. A COMMITTED INCOMPETENT WHO IS INDIGENT MAY NOT BE CONDITIONALLY  
27 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE  
28 CLOTHING. WHEN A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A  
29 LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT SHALL  
30 FURNISH THE COMMITTED INCOMPETENT WITH AN AMOUNT OF MONEY IN CONFORMANCE  
31 WITH SECTION 31-228.  
32           F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS  
33 THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED  
34 INCOMPETENT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE  
35 COMMITTED INCOMPETENT.  
36           36-4008. Revocation of conditional release to a less  
37                           restrictive alternative; hearing  
38           A. IF THE ATTORNEY FOR THE STATE OR THE COURT BELIEVES THAT A  
39 COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE  
40 ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF RELEASE OR  
41 IS IN NEED OF ADDITIONAL CARE AND TREATMENT, THE DESIGNATED SERVICE  
42 PROVIDER OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR, OR THE  
43 COURT ON ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF  
44 REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED

1 INCOMPETENT'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN  
2 DAYS AFTER THE PETITION IS FILED.

3 B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES  
4 THAT A COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS  
5 RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF  
6 THE COMMITTED INCOMPETENT'S CONDITIONAL RELEASE OR IS IN NEED OF  
7 ADDITIONAL CARE OR TREATMENT OR THAT THE CIRCUMSTANCES OF THE RELEASE HAVE  
8 CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE, THE COURT OR THE  
9 DEPARTMENT OF HEALTH SERVICES MAY ORDER THAT THE CONDITIONALLY RELEASED  
10 COMMITTED INCOMPETENT BE DETAINED AND TAKEN INTO CUSTODY UNTIL A HEARING  
11 CAN BE SCHEDULED TO DETERMINE IF THE COMMITTED INCOMPETENT'S CONDITIONAL  
12 RELEASE SHOULD BE REVOKED OR MODIFIED. THE COURT AND ANY ATTORNEY OF  
13 RECORD REPRESENTING THE COMMITTED INCOMPETENT SHALL BE NOTIFIED BEFORE THE  
14 CLOSE OF THE NEXT JUDICIAL DAY OF THE COMMITTED INCOMPETENT'S DETENTION.  
15 THE ATTORNEY FOR THE STATE AND THE CONDITIONALLY RELEASED COMMITTED  
16 INCOMPETENT MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF THE COMMITTED  
17 INCOMPETENT. IF THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT IS  
18 INDIGENT, THE COURT, ON REQUEST, SHALL ASSIST THE COMMITTED INCOMPETENT IN  
19 OBTAINING A COMPETENT PROFESSIONAL TO CONDUCT THE EXAMINATION.

20 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED  
21 INCOMPETENT'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE  
22 HEARING, THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A  
23 PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED INCOMPETENT WHO IS  
24 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY  
25 WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE  
26 OR TREATMENT, IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE  
27 COMMUNITY IS NO LONGER SAFE, IF THE COMMITTED INCOMPETENT SHOULD CONTINUE  
28 ON CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE  
29 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE COMMITTED INCOMPETENT SHOULD  
30 BE COMMITTED TO TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE  
31 PROVISIONS OF THIS ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE  
32 COURT FINDS THAT THE HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

33 36-4009. Petition for discharge; procedures

34 A. IF THE SUPERINTENDENT OR THE DIRECTOR OF THE DEPARTMENT OF  
35 HEALTH SERVICES DETERMINES THAT THE COMMITTED INCOMPETENT'S MENTAL  
36 ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE COMMITTED  
37 INCOMPETENT IS NO LONGER DANGEROUS IF DISCHARGED BUT REMAINS INCOMPETENT  
38 TO STAND TRIAL, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED  
39 INCOMPETENT TO PETITION THE COURT FOR DISCHARGE. THE COMMITTED  
40 INCOMPETENT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE  
41 STATE. THE COURT SHALL HOLD A HEARING ON THE PETITION FOR DISCHARGE  
42 WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.

43 B. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE DISCHARGE  
44 HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER  
45 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED

1 INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY  
2 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE  
3 COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS  
4 SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE  
5 BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED  
6 INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND  
7 THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS. IF THE STATE DOES NOT  
8 MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE DISCHARGED  
9 FROM TREATMENT.

10 C. IF A COMMITTED INCOMPETENT IS DISCHARGED, THE DEPARTMENT OF  
11 HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE  
12 COMMITTED INCOMPETENT'S DISCHARGE SO THAT THE DEPARTMENT OF PUBLIC SAFETY  
13 MAY COMMENCE ANY NOTIFICATION PROCESS UNDER SECTION 13-3825.

14 D. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM  
15 ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE  
16 SUPERINTENDENT OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE  
17 DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL GIVE ANNUAL WRITTEN  
18 NOTICE TO THE COMMITTED INCOMPETENT OF THE COMMITTED INCOMPETENT'S RIGHT  
19 TO PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE  
20 SUPERINTENDENT OR DIRECTOR AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO  
21 ANY ATTORNEY WHO REPRESENTS THE COMMITTED INCOMPETENT IN CONNECTION WITH  
22 PROCEEDINGS UNDER THIS ARTICLE. THE NOTICE SHALL CONTAIN A WAIVER OF  
23 RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH  
24 THE ANNUAL EXAMINATION REPORT.

25 36-4010. Place for proceedings; transportation; immunity

26 A. A COMMITTED INCOMPETENT MAY NOT BE TRANSPORTED FROM A LICENSED  
27 FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT, EXCEPT THAT A  
28 COMMITTED INCOMPETENT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING  
29 REASONS:

- 30 1. A HEARING ON AN ANNUAL EXAMINATION.
- 31 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS  
32 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
- 33 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION  
34 36-4009.
- 35 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED  
36 INCOMPETENT IS NECESSARY.
- 37 5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE  
38 WHERE THE PRESENCE OF THE COMMITTED INCOMPETENT IS REQUIRED.

39 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY COMMITTED  
40 INCOMPETENT WHO THE COURT HAS DETERMINED IS SUBJECT TO DISCHARGE PURSUANT  
41 TO SECTION 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

42 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING  
43 FROM BEING HELD ON THE GROUNDS OF THE STATE HOSPITAL OR FROM USING A  
44 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT  
45 SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS

1 ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY  
2 INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF  
3 THE ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN  
4 INTERACTIVE AUDIOVISUAL DEVICE.

5 D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR  
6 TRANSPORTING A COMMITTED INCOMPETENT TO AND FROM A MEDICAL FACILITY. THE  
7 DEPARTMENT SHALL DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND  
8 LEVEL OF SECURITY AND RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE  
9 COMMITTED INCOMPETENT. IN DETERMINING THE APPROPRIATE MODE OF  
10 TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE DEPARTMENT SHALL  
11 CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING PERSONNEL AND THE  
12 DETAINED OR COMMITTED INCOMPETENT.

13 E. THE DEPARTMENT OF HEALTH SERVICES AND ANY COUNTY SHERIFF ARE  
14 IMMUNE FROM LIABILITY FOR ANY GOOD FAITH ACTS UNDER THIS SECTION.

15 36-4011. Findings

16 A FINDING MADE BY THE COURT PURSUANT TO THIS ARTICLE IS INADMISSIBLE  
17 IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS ARTICLE OR UNDER  
18 TITLE 13, CHAPTER 41.

19 Sec. 8. Retroactivity

20 This act applies retroactively to from and after December 31, 2020.